

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Anders Vinberg
Serial No.: 10/091,067
Filing Date: March 4, 2002
Art Unit: 2152
Confirmation No.: 8007
Examiner: Philip C. Lee
Title: *Method and Apparatus for Generating and Recognizing Speech as a User Interface Element in Systems and Network Management*

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review (“Request”) is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 (“OG Notice”). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

REMARKS

Applicant contends that the rejections of Claims 1, 3-11, 13, 15, and 17-24 on prior art grounds contain clear legal and factual deficiencies, as described below. In a Final Office Action mailed December 31, 2008 (the “Final Office Action”), Claims 1, 4, 13, 15, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,367,670 issued to Ward et al. (“*Ward*”) in view of U.S. Patent No. 6,603,396 issued to Lewis et al. (“*Lewis*”), and further in view of U.S. Patent No. 5,745,692 to Lohmann II et al. (“*Lohmann*”). Claims 3, 5-11, 17-19, 21-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of other references and/or Official Notice. Applicant requests a finding that these rejections are improper and allowance of all pending claims.

With respect to Claim 1, the Examiner contends that *Ward* teaches, suggests, or discloses “filtering [an] alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition.” *See* Final Office Action, pp. 3-4 (citing *Ward*, col. 5, ll. 21-27). The Examiner, however, is incorrect. As discussed in Applicant’s response dated March 30, 2009 at pages 9-10, the four “paths” in the cited portion of *Ward* relied upon by the Examiner are not “notification paths.” As recited in Claim 1, a notification path must be “determined based at least on a property of an object associated with the alert condition.” The four “paths” identified by the Examiner fail to satisfy this requirement. Instead, *Ward* merely discloses that:

As may be seen in FIG. 2, the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored. Each system component being monitored may be referred to as an object having a number of attributes.

Ward, col. 5, ll. 21-27. “When the attributes exceed their boundary or threshold values, an alert will be generated.” *Id.* at col. 5, ll. 31-32. “Examples of alert conditions . . . include loss of system power, server subsystem failure, [and] excessive server temperature as well as other configurable events that require outside attention.” *Id.* at col. 7, ll. 19-24. Once it is determined that an alert should be issued, “an alert can be issued in a number of ways.” *Id.* at col. 7, ll. 25-27. In particular, the alert may be delivered “in-band” or “out-of-band.” *Id.* at

col. 7, ll. 28-29. More particularly, “out-of band” alerts may be delivered by “sending a protocol message over a switched telephone connection to the system manager facility 34, by dialing a phone number associated with a pager 56 or by dialing a phone number to a phone 58 associated with a person and generating a synthesized voice message upon completing a connection with the phone 58.” *Id.* at col. 7, ll. 50-57.

According to the Examiner, the methods of delivering these three “out-of-bound” alerts and the “in-band” alerts are the four paths referenced in col. 5, ll. 21-27 of *Ward*. See Final Office Action, p. 20. However, these four paths are not “notification paths” as recited in Claim 1. At best, *Ward* discloses that the paths may be determined based “on the particular type of actual or potential failure being monitored.” *Ward*, col. 5, ll. 21-27. However, *Ward* fails to teach, suggest, or disclose how this is done. Moreover, this disclosure falls well short of teaching, suggesting, or disclosing that the paths are “determined based on at least on a property of an object associated with the alert condition.” It is not enough that the notification path be determined based on the alert condition. Instead, Claim 1 requires that the notification path be “determined based on at least a property of an object associated with the alert condition. Simply put, *Ward* fails to teach, suggest, or disclose this limitation. For at least this reason, the rejection of Claim 1 is improper.

Furthermore, the *Ward-Lewis-Lohmann* combination suggested by the Examiner also fails to teach, suggest, or disclose “the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems,” as recited in Claim 1. Instead, the Examiner relies upon the various system components monitored by system manager 22 of *Ward*. See Final Office Action, pp. 3, 21. These include “server subsystems, asynchronous serial port, the computer system bus 13, and the intelligent disk array controller device 26.” Final Office Action, p. 21. These system components, however, are not “heterogeneous application subsystems” as recited in Claim 1. Claim 1 explicitly states that each heterogeneous application subsystem must “perform[] an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application

subsystems.” The system components in *Ward* cited by the Examiner fail to satisfy this limitation. In fact, the cited components are all part the same server 12 (the EISA server) shown in Figures 1 and 3 of *Ward*. As such, they do not perform distinct information technology management operations. Instead, they perform interrelated operations for the same EISA server. For this reason as well, the rejection of Claim 1 is improper. Therefore, Applicant respectfully requests that the rejection of Claim 1 be withdrawn.

Similar to Claim 1, Claims 13 and 15 each recite “a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition” and “a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems.” Therefore, Applicant submits that Claims 13 and 15 are allowable, for example, for reasons similar to those discussed above with regard to Claim 1.

Claims 3-11 and Claims 17-19 and 21-24 depend from Claim 1 and 15, respectively. Therefore, Applicant submits that Claims 3-11, 17-19, and 21-24 are allowable, for example, for reasons similar to those discussed above with regard to Claims 1 and 15. As such, Applicant respectfully requests that the rejection of Claims 3-11, 17-19, and 21-24 be withdrawn.

CONCLUSION

As the rejections of Claims 1, 3-11, 13, 15, and 17-24 contain clear deficiencies, Applicant respectfully requests full allowance of Claims 1, 3-11, 13, 15, and 17-24. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTT S L.L.P.
Attorneys for Applicant



Matthew A. Hayenga
Reg. No. 54,156
Phone: (214) 953-6817

Date: April 17, 2009

CORRESPONDENCE ADDRESS:

Customer Number: **05073**